STATE OF ARIZONA

JANICE K. BREWER
GOVERNOR

EXECUTIVE OFFICE

May 11, 2010

The Honorable Ken Bennett
Secretary of State
1700 W. Washington
Phoenix, Arizona 85007

RE: HB 2617 (mining amendments; water; permits; rules)

Dear Secretary Bennett:

Today I signed HB 2617. I have heard from various sources, including Tribes, about their concerns regarding this legislation. I have heard from mining interests about the benefits of this legislation. I have also heard from my advisors about the impacts of this legislation. Let me assure the citizens of this State, as both the Director of the Arizona Department of Water Resources (ADWR) and the Director of the Arizona Department of Environmental Quality (ADEQ) have assured me, this legislation will not impact the State's ability to protect the natural resources and environment of this great State.

I have attached a memo issued jointly by the two Directors that responds to the concerns I have heard expressed. After you have read the memo, I believe it will become clear that many concerns probably resulted from individuals misinterpreting the rather complex statutes that govern the water and environment regulatory powers of these two agencies. To the extent concerns still exist, I have instructed the Directors to open a dialogue with stakeholders to determine if any modifications or clarifications should be considered for enactment next legislative session.

Sincerely,

Janice K. Brewer
Governor

cc: The Honorable Kirk Adams
The Honorable Robert Burns
The Honorable Russell Jones

Attachment

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602-542-4331 • FAX 602-542-7602

JANICE K. BREWER
Governor

ARIZONA DEPARTMENT OF
WATER RESOURCES
HERBERT R. GUENTHER
Director

ARIZONA DEPARTMENT OF
ENVIRONMENTAL QUALITY
BENJAMIN H. GRUMBLES
Director

Date: May 11, 2010
To: Governor Janice K. Brewer
From: Director Benjamin Grumbles mthart for Benjamin Grumbles
Director Herb Guenther Herbert R Guenther
Subject: HB2617

After reviewing HB2617, both ADWR and ADEQ believe this legislation should not harm the State's obligations and authorities to protect our water resources and environment. In addition, this legislation contains several provisions which should help the agencies in fulfilling their missions. For example, HB 2617 allows ADWR and ADEQ to contract with private industry to write all types of permits, including mining permits, while still maintaining control over the ultimate decision (see A.R.S. § 45-104(H), page 8, lines 1-11 and A.R.S. § 49-104(C)(2), page 23, lines 43-45 through page 24, lines 1-8). This allows agencies to focus their limited resources on other areas, allows for permittees to receive their permits more quickly, and creates jobs in the private sector.

ADEQ would also like to clear up any misunderstanding regarding the provision preventing the agency from imposing requirements more stringent than federal standards addressing the same subject matter (see A.R.S. § 49-104(A)(17), page 21, lines 22-27). This provision adds some certainty for sectors subject to environmental regulation, including mining. It assures anyone who is already subject to a federal standard that ADEQ will not adopt or try to enforce a conflicting standard. It requires ADEQ to have clear statutory authority to impose requirements that conflict with federal laws on the same subject. If there is no federal law on the subject, this restriction on ADEQ does not apply. For example, if there is no federal drinking water standard for a contaminant (like sulfate, salinity, etc.), this provision would not preclude ADEQ from addressing such contaminants in standards, rules, permits, or orders. There is nothing in this legislation that prevents ADEQ from addressing environmental issues that the federal government has not yet addressed.

ADEQ has heard from tribal leaders, specific concerns with this provision and the impacts it may have on their interests, specifically as it relates to water quality within tribal boundaries. This provision (A.R.S. § 49-104(A)(17), page 21, lines 22-27), even without the final sentence dealing directly with tribal standards, will not negatively impact ADEQ's continued recognition and protection of water quality standards set by tribes. Nevertheless, in response to the tribal concerns raised during the drafting of the legislation, ADEQ worked with tribal representatives and other stakeholders to come up with the final sentence, which states that "[t]his provision shall not be construed to adversely affect standards adopted by Indian tribes under federal".

In addition to prohibiting ADEQ's conflict with federal law, this bill also eliminates potential unnecessary duplication in water permitting, by removing the requirement that all "point sources discharges to navigable waters" requiring a surface water permit under the Clean Water Act also require an Aquifer Protection Permit (APP) (*see* A.R.S. § 49-241(B)(9), page 26, line 24). This legislative action to remove an automatic redundancy in permitting for all types of facilities, not just mining, will result in minimal impact, if any, on ADEQ's ability to protect our underground waters. Even with this legislation, there will remain a number of laws that protect Arizona's aquifers from surface water discharges. First, any point source discharge to navigable waters will still require a surface water Arizona Pollutant Discharge Elimination System (AZPDES)

permit from ADEQ under State law and the Clean Water Act.[1] Furthermore, any facility causing a point source discharge falling into one of the remaining categories automatically requiring an APP (e.g., all surface impoundments, mine tailings, mine ponds, mine leaching operations, and sewage treatment facilities) will still be required to obtain an APP. Finally, the requirement that any activity which causes a reasonable probability that a pollutant will reach and aquifer, regardless of whether if falls into one of the listed categories, still exists, and will require an APP. Because these protections still remain, and given that ADEQ now has the authority to determine on a case-by-case basis whether point source discharge activities have a potential to impact groundwater, removing this automatic redundancy in permitting is prudent.

In another provision dealing with surface water disharges and groundwater protection, language has been inserted to clarify where ADEQ must evaluate aquifer water quality standards in determining whether to revoke a general stormwater APP in favor of requiring an individual APP (see A.R.S. § 49-245.01(B), page 32, lines 38 and 43-44). This addition provides regulatory clarity to all who are subject to this general permit by requiring ADEQ to evaluate compliance with water quality standards in the same manner under the stormwater general APP as it does in all other APPs. Under A.R.S. § 49-244, ADEQ is required to designate a "point of compliance" for each facility receiving an APP and the point of compliance is the "point at which compliance with aquifer water quality standards shall be determined." This new addition regarding the stormwater general APP merely requires ADEQ to evaluate aquifer water quality standards in the same manner as every other type of APP.

[1] Unlike when the requirement to automatically obtain an APP was first enacted, ADEQ, not EPA, issues these surface water permits. ADEQ can now to determine on a case-by-case basis if surface water discharges will require additional restrictions to prevent impacts to the underlying aquifer.

Senate Engrossed House Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 309

HOUSE BILL 2617

AN ACT

AMENDING SECTIONS 27-121, 41-1001.01, 41-1002, 41-1052 AND 41-1077, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 27, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-3020.01; AMENDING TITLE 41, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 46; AMENDING SECTIONS 45-104, 45-132, 45-454.01, 45-471, 45-544, 45-596, 49-104, 49-109, 49-241, 49-243 AND 49-245.01, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 2, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-290.02; RELATING TO MINING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 27-121, Arizona Revised Statutes, is amended to read:

27-121. Qualifications of mine inspector; duties; deputies; salary; immunity

A. The state mine inspector shall be a resident of this state at least two years before election, not under thirty years of age, and shall have been practically engaged in, and acquainted with, mines and mining in this state, and shall have had at least four years' experience in ~~underground~~ mining ~~and three additional years in either underground mining, smelting, open pit mining,~~ or experience in any industry under the jurisdiction of the state mine inspector, OR BOTH.

B. No person may be an inspector or deputy inspector while an employee, director or officer of a mining, milling or smelting company.

C. The inspector, and each deputy, shall devote full time to official duties.

D. The inspector shall receive an annual salary pursuant to section 41-1904 and necessary traveling expenses when traveling in discharge of official duties.

E. The mine inspector shall have a seal bearing the words "Mine Inspector, State of Arizona", which shall be affixed to official documents.

F. Any claim or action against the mine inspector or the inspector's deputies, agents or employees in their official capacity as described in this title shall be brought against the state of Arizona and not against the mine inspector, deputy, agent or employee individually.

Sec. 2. Section 41-1001.01, Arizona Revised Statutes, is amended to read:

41-1001.01. Regulatory bill of rights

A. To ensure fair and open regulation by state agencies, a person:

1. Is eligible for reimbursement of fees and other expenses if the person prevails by adjudication on the merits against an agency in a court proceeding regarding an agency decision as provided in section 12-348.

2. Is eligible for reimbursement of the person's costs and fees if the person prevails against any agency in an administrative hearing as provided in section 41-1007.

3. Is entitled to have an agency not charge the person a fee unless the fee for the specific activity is expressly authorized as provided in section 41-1008.

4. Is entitled to receive the information and notice regarding inspections prescribed in section 41-1009.

5. May review the full text or summary of all rule making activity, the summary of substantive policy statements and the full text of executive orders in the register as provided in article 2 of this chapter.

6. May participate in the rule making process as provided in articles 3, 4, 4.1 and 5 of this chapter, including:

(a) Providing written or oral comments on proposed rules to an agency as provided in section 41-1023 and having the agency adequately address those comments as provided in section 41-1052, subsection ~~C~~ D.

(b) FILING AN EARLY REVIEW PETITION WITH THE GOVERNOR'S REGULATORY REVIEW COUNCIL AS PROVIDED IN ARTICLE 5 OF THIS CHAPTER.

~~(b)~~ (c) Providing written or oral comments on rules to the governor's regulatory review council DURING THE MANDATORY SIXTY-DAY COMMENT PERIOD as provided in article 5 of this chapter.

7. Is entitled to have an agency not base a licensing decision in whole or in part on licensing conditions or requirements that are not specifically authorized by statute, rule or state tribal gaming compact as provided in section 41-1030, subsection B.

8. Is entitled to have an agency not make a rule under a specific grant of rule making authority that exceeds the subject matter areas listed in the specific statute or not make a rule under a general grant of rule making authority to supplement a more specific grant of rule making authority as provided in section 41-1030, subsection C.

9. May allege that an existing agency practice or substantive policy statement constitutes a rule and have that agency practice or substantive policy statement declared void because the practice or substantive policy statement constitutes a rule as provided in section 41-1033.

10. May file a complaint with the administrative rules oversight committee concerning:

(a) A rule's, practice's or substantive policy statement's lack of conformity with statute or legislative intent as provided in section 41-1047.

(b) An existing statute, rule, practice alleged to constitute a rule or substantive policy statement that is alleged to be duplicative or onerous as provided in section 41-1048.

11. May have the person's administrative hearing on contested cases and appealable agency actions heard by an independent administrative law judge as provided in articles 6 and 10 of this chapter.

12. May have administrative hearings governed by uniform administrative appeal procedures as provided in articles 6 and 10 of this chapter.

13. May have an agency approve or deny the person's license application within a predetermined period of time as provided in article 7.1 of this chapter.

14. Is entitled to receive written notice from an agency on denial of a license application:

(a) That justifies the denial with references to the statutes or rules on which the denial is based as provided in section 41-1076.

(b) That explains the applicant's right to appeal the denial as provided in section 41-1076.

15. Is entitled to receive information regarding the license application process at the time the person obtains an application for a license as provided in section 41-1079.

16. May receive public notice and participate in the adoption or amendment of agreements to delegate agency functions, powers or duties to political subdivisions as provided in section 41-1026.01 and article 8 of this chapter.

17. May inspect all rules and substantive policy statements of an agency, including a directory of documents, in the office of the agency director as provided in section 41-1091.

18. May file a complaint or inquiry with the advocate for private property rights regarding constitutional taking as provided in chapter 8, article 1.1 of this title.

19. May file a complaint with the office of the ombudsman-citizens aide to investigate administrative acts of agencies as provided in chapter 8, article 5 of this title.

20. UNLESS SPECIFICALLY AUTHORIZED BY STATUTE, MAY EXPECT STATE AGENCIES TO AVOID DUPLICATION OF OTHER LAWS THAT DO NOT ENHANCE REGULATORY CLARITY AND TO AVOID DUAL PERMITTING TO THE EXTENT PRACTICABLE AS PRESCRIBED IN SECTION 41-1002.

B. The enumeration of the rights listed in subsection A of this section does not grant any additional rights that are not prescribed in the sections referenced in subsection A of this section.

Sec. 3. Section 41-1002, Arizona Revised Statutes, is amended to read:

41-1002. Applicability and relation to other law

A. THIS ARTICLE AND articles ~~1~~ 2 through 5 of this chapter apply to all agencies and all proceedings not expressly exempted.

B. This chapter creates only procedural rights and imposes only procedural duties. They are in addition to those created and imposed by other statutes. To the extent that any other statute would diminish a right created or duty imposed by this chapter, the other statute is superseded by this chapter, unless the other statute expressly provides otherwise.

C. An agency may grant procedural rights to persons in addition to those conferred by this chapter so long as rights conferred on other persons by any provision of law are not substantially prejudiced.

D. UNLESS SPECIFICALLY AUTHORIZED BY STATUTE, AN AGENCY SHALL AVOID DUPLICATION OF OTHER LAWS THAT DO NOT ENHANCE REGULATORY CLARITY AND SHALL AVOID DUAL PERMITTING TO THE EXTENT PRACTICABLE.

Sec. 4. Section 41-1052, Arizona Revised Statutes, is amended to read:

41-1052. Council review and approval

A. Before filing a final rule with the secretary of state, an agency shall prepare, transmit to the council and the committee and obtain the council's approval of the rule and its preamble and economic, small business and consumer impact statement ~~which~~ THAT meets the requirements of section 41-1055.

B. THE COUNCIL SHALL ACCEPT AN EARLY REVIEW PETITION OF A PROPOSED RULE, IN WHOLE OR IN PART, IF THE PROPOSED RULE IS ALLEGED TO VIOLATE ANY OF THE CRITERIA PRESCRIBED IN SUBSECTION D OF THIS SECTION AND IF THE EARLY

PETITION IS FILED BY A PERSON WHO WOULD BE ADVERSELY IMPACTED BY THE PROPOSED RULE. THE COUNCIL MAY DETERMINE WHETHER THE PROPOSED RULE, IN WHOLE OR IN PART, VIOLATES ANY OF THE CRITERIA PRESCRIBED IN SUBSECTION D OF THIS SECTION.

~~B.~~ C. Within ~~ninety~~ ONE HUNDRED TWENTY days of receipt of the rule, preamble and economic, small business and consumer impact statement, the council shall review and approve or return, in whole or in part, the rule, preamble or economic, small business and consumer impact statement. An agency may resubmit a rule, preamble or economic, small business and consumer impact statement if the council returns the rule, economic, small business and consumer impact statement or preamble, in whole or in part, to the agency.

~~C.~~ D. The council shall not approve the rule unless:

1. The economic, small business and consumer impact statement contains the information, data and analysis prescribed by this article.

2. The economic, small business and consumer impact statement is generally accurate.

3. The probable benefits of the rule outweigh the probable costs of the rule.

4. The rule is clear, concise and understandable.

5. The rule is not illegal, inconsistent with legislative intent or beyond the agency's statutory authority.

6. The agency adequately addressed the comments on the proposed rule and any supplemental proposals.

7. The rule is not a substantial change, considered as a whole, from the proposed rule and any supplemental notices.

8. The preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.

~~D.~~ E. The council shall verify that a rule with new fees does not violate section 41-1008. The council shall not approve a rule that contains a fee increase unless two-thirds of the voting quorum present vote to approve the rule.

~~E.~~ F. The council shall verify that a rule with an immediate effective date complies with section 41-1032. The council shall not approve a rule with an immediate effective date unless two-thirds of the voting quorum present vote to approve the rule.

~~F.~~ G. The council may require a representative of an agency whose rule is under examination to attend a council meeting and answer questions. The council may also communicate to the agency its comments on any rule, preamble or economic, small business and consumer impact statement and require the agency to respond to its comments in writing.

~~G.~~ H. AT ANY TIME DURING THE SIXTY DAYS IMMEDIATELY FOLLOWING RECEIPT OF THE RULE, a person may submit written comments to the council that are within the scope of subsection ~~C~~ D, ~~D~~ E or ~~E~~ F of this section. The

council may permit oral comments at a council meeting within the scope of subsection ~~C~~ D, ~~D~~ E or ~~E~~ F of this section.

~~H.~~ I. If the agency makes a good faith effort to comply with the requirements prescribed in this article and has explained in writing the methodology used to produce the economic, small business and consumer impact statement, the rule may not be invalidated after it is finalized on the ground that the contents of the economic, small business and consumer impact statement are insufficient or inaccurate or on the ground that the council erroneously approved the rule, except as provided for by section 41-1056.01.

~~I.~~ J. The absence of comments pursuant to subsection ~~C~~ D, ~~D~~ E or ~~E~~ F of this section or article 4.1 of this chapter does not prevent the council from acting pursuant to this section.

Sec. 5. Section 41-1077, Arizona Revised Statutes, is amended to read:

41-1077. Consequence for agency failure to comply with overall time frame; refund; penalty

A. If an agency does not issue to an applicant the written notice granting or denying a license within the overall time frame or within the time frame extension pursuant to section 41-1075, the agency shall refund to the applicant all fees charged for reviewing and acting on the application for the license and shall excuse payment of any such fees that have not yet been paid. The agency shall not require an applicant to submit an application for a refund pursuant to this subsection. The refund shall be made within thirty days after the expiration of the overall time frame or the time frame extension. The agency shall continue to process the application subject to subsection B of this section. Notwithstanding any other statute, the agency shall make the refund from the fund in which the application fees were originally deposited. This section applies only to license applications that were subject to substantive review.

B. Except for license applications that were not subject to substantive review, the agency shall pay a penalty to the state general fund for each month after the expiration of the overall time frame or the time frame extension until the agency issues written notice to the applicant granting or denying the license. The agency shall pay the penalty from the agency fund in which the application fees were originally deposited. The penalty shall be ~~one~~ TWO AND ONE-HALF per cent of the total fees received by the agency for reviewing and acting on the application for each license that the agency has not granted or denied on the last day of each month after the expiration of the overall time frame or time frame extension for that license.

Sec. 6. Title 41, chapter 27, article 2, Arizona Revised Statutes, is amended by adding section 41-3020.01, to read:

41-3020.01. Mining advisory council; termination July 1, 2020

A. THE MINING ADVISORY COUNCIL TERMINATES ON JULY 1, 2020.

B. TITLE 41, CHAPTER 46 IS REPEALED ON JANUARY 1, 2021.

Sec. 7. Title 41, Arizona Revised Statutes, is amended by adding chapter 46, to read:

CHAPTER 46

MINING ADVISORY COUNCIL

ARTICLE 1. GENERAL PROVISIONS

41-4601. Mining advisory council

A. THE MINING ADVISORY COUNCIL IS ESTABLISHED CONSISTING OF THE FOLLOWING MEMBERS:

1. THE STATE MINE INSPECTOR OR THE STATE MINE INSPECTOR'S DESIGNEE.

2. ONE MEMBER WHO REPRESENTS A SMALL COMPANY THAT IS ACTIVELY ENGAGED IN THE MINING INDUSTRY AND WHO IS APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

3. TWO MEMBERS WHO ARE ACTIVELY ENGAGED IN THE AGGREGATE MINING INDUSTRY AND WHO ARE APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

4. TWO MEMBERS WHO REPRESENT LARGE COMPANIES THAT ARE ACTIVELY ENGAGED IN THE MINING INDUSTRY AND WHO ARE APPOINTED BY THE PRESIDENT OF THE SENATE.

5. ONE MEMBER WHO REPRESENTS A MINING SUPPLIER COMPANY THAT IS ACTIVELY ENGAGED IN THE MINING INDUSTRY AND WHO IS APPOINTED BY THE PRESIDENT OF THE SENATE.

6. TWO MEMBERS OF THE PUBLIC WHO HAVE NATURAL RESOURCES EXPERIENCE AND WHO ARE APPOINTED BY THE GOVERNOR.

B. THE INITIAL MEMBERS APPOINTED PURSUANT TO SUBSECTION A, PARAGRAPHS 2 THROUGH 6 SHALL ASSIGN THEMSELVES BY LOT TO TWO, THREE, FOUR AND FIVE YEARS IN OFFICE. ALL SUBSEQUENT MEMBERS SERVE FIVE YEAR TERMS OF OFFICE. A MEMBER MAY CONTINUE TO SERVE UNTIL THE MEMBER'S SUCCESSOR IS APPOINTED AND ASSUMES OFFICE. A MEMBER MAY NOT BE APPOINTED TO MORE THAN ONE FULL TERM PLUS APPOINTMENT TO FILL A VACANCY FOR THE REMAINDER OF AN UNEXPIRED TERM.

C. THE APPOINTING AUTHORITY MAY REMOVE A MEMBER FOR CAUSE. IN ADDITION, A MEMBER IS DEEMED TO HAVE VACATED THE MEMBER'S OFFICE IF THE MEMBER:

1. CEASES TO ENGAGE IN THE MEMBER'S QUALIFYING OCCUPATION.

2. NO LONGER RESIDES IN THIS STATE.

3. IS ABSENT WITHOUT EXCUSE FROM THREE CONSECUTIVE REGULAR MEETINGS OF THE COUNCIL.

4. RESIGNS, DIES OR BECOMES UNABLE TO PERFORM THE MEMBER'S DUTIES.

D. MEMBERS OF THE ADVISORY COUNCIL ARE NOT ELIGIBLE TO RECEIVE COMPENSATION BUT ARE ELIGIBLE FOR REIMBURSEMENT OF EXPENSES PURSUANT TO TITLE 38, CHAPTER 4, ARTICLE 2. THE ADVISORY COUNCIL IS A PUBLIC BODY FOR PURPOSES OF TITLE 38, CHAPTER 3, ARTICLE 3.1.

E. THE ADVISORY COUNCIL FUNCTIONS INCLUDE:

1. SELECTING A CHAIRPERSON AND VICE-CHAIRPERSON FROM AMONG ITS MEMBERS.

2. HOLDING MEETINGS AT THE CALL OF THE CHAIRPERSON OR A MAJORITY OF ITS MEMBERS.

3. REVIEWING MINING POLICY IN THIS STATE AS ESTABLISHED BY LAW AND AS ADMINISTERED IN ALL FUNCTIONAL AREAS OF STATE GOVERNMENT.

4. REVIEWING, ADVISING AND MAKING RECOMMENDATIONS TO STATE AGENCIES ON PROPOSED RULES AND BUDGET ALLOCATIONS AFFECTING MINING.

F. THE ADVISORY COUNCIL MAY CONDUCT PERIODIC ANALYSES OF AGENCY POLICY AFFECTING MINING, INCLUDING POLICY AS REFLECTED BY DECISIONS OF ADMINISTRATIVE LAW JUDGES AND AGENCY DIRECTORS.

G. IN ADOPTING ADMINISTRATIVE RULES AND BUDGETS, EACH STATE AGENCY MAY INCLUDE THE COMMENTS OF THE ADVISORY COUNCIL IN THE OFFICIAL RECORD. IN ADOPTING RULES AFFECTING MINING, EACH STATE AGENCY MAY CONSIDER THE RECOMMENDATIONS OF THE ADVISORY COUNCIL.

Sec. 8. Section 45-104, Arizona Revised Statutes, is amended to read:

45-104. Department organization; deputy directors; employees; legal counsel; branch offices; consultants

A. The director may establish and organize divisions within the department and otherwise organize the department in the manner the director deems necessary to make the operation of the department efficient and effective.

B. The director may appoint a deputy director to each division or organizational unit that the director may establish. Deputy directors are exempt from the state personnel system, shall serve at the pleasure of the director and are entitled to receive compensation pursuant to section 38-611.

C. The director, within the classification and pay scales adopted by the state personnel board, may employ, define the duties of and prescribe the terms and conditions of employment of such clerical, technical, professional and administrative personnel as necessary to efficiently perform the responsibilities of the department. Compensation for all employees shall be pursuant to section 38-611.

D. The director may employ on a contract basis geologists, hydrologists, consulting engineers, other expert consultants and engineering and other assistants as the director deems advisable, who are not subject to the classification provided for in title 41, chapter 4, article 5.

E. The director may utilize the services of accounting, legal or engineering personnel made available by any department or agency of this state, who shall serve without additional compensation.

F. The director may employ legal counsel to advise and represent the department in connection with legal matters before other departments and agencies of this state, and represent the department and this state in litigation concerning affairs of the department. Legal counsel is not subject to the classification provided for in title 41, chapter 4, article 5.

G. The director shall maintain the director's office in Phoenix and may establish a branch office of the department in each active management area established pursuant to chapter 2, article 2 of this title.

H. THE DIRECTOR ON BEHALF OF THE DEPARTMENT MAY CONTRACT WITH PRIVATE CONSULTANTS FOR THE PURPOSES OF ASSISTING THE DEPARTMENT IN REVIEWING APPLICATIONS FOR LICENSES, PERMITS OR OTHER AUTHORIZATIONS TO DETERMINE WHETHER AN APPLICANT MEETS THE CRITERIA FOR ISSUANCE OF THE LICENSE, PERMIT OR OTHER AUTHORIZATION. IF THE DEPARTMENT CONTRACTS WITH A CONSULTANT UNDER THIS SUBSECTION, AN APPLICANT MAY REQUEST THAT THE DEPARTMENT EXPEDITE THE APPLICATION REVIEW BY REQUESTING THAT THE DEPARTMENT USE THE SERVICES OF THE CONSULTANT AND BY AGREEING TO PAY THE DEPARTMENT THE COSTS OF THE CONSULTANT'S SERVICES. NOTWITHSTANDING ANY OTHER LAW, MONIES PAID BY APPLICANTS FOR EXPEDITED REVIEWS PURSUANT TO THIS SUBSECTION ARE APPROPRIATED TO THE DEPARTMENT FOR USE IN PAYING CONSULTANTS FOR SERVICES.

Sec. 9. Section 45-132, Arizona Revised Statutes, is amended to read:

45-132. Filling large bodies of water for landscape, scenic or recreational purposes prohibited; exceptions; preemption

A. Except as provided in subsection B of this section, in an active management area established under chapter 2 of this title, a person shall not use any water for the purpose of filling or refilling all or a portion of a body of water.

B. This section does not apply to a body of water if any of the following applies:

1. The body of water was filled before January 1, 1987. If the surface area of the body of water is increased on or after January 1, 1987, this exception does not apply to the quantity of water that is added.

2. The director has determined that substantial capital investment has been made in the physical on-site construction of the body of water before January 1, 1987. If the surface area of the body of water is increased after it is initially filled, this exception does not apply to the quantity of water that is added.

3. The body of water is located in a recreational facility that is open to the public and owned or operated by the United States, this state, a city, town or county, a flood control district established under title 48, chapter 21 or a multi-county water conservation district established under title 48, chapter 22.

4. The body of water is filled and refilled exclusively with any one or any combination of the following:

(a) Effluent.

(b) Storm water runoff that is not subject to appropriation under section 45-141.

(c) Poor quality water used pursuant to a permit issued under subsections C and D of this section.

(d) Groundwater withdrawn pursuant to a drainage water withdrawal permit issued under section 45-519.

(e) Groundwater withdrawn in the first year of a temporary dewatering permit issued under section 45-518.

(f) Groundwater withdrawn as part of a remedial action under title 49, chapter 2, article 5, INCLUDING MITIGATION OF A NONHAZARDOUS RELEASE UNDERTAKEN PURSUANT TO AN ORDER ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO SECTION 49-286.

(g) Water used pursuant to a permit for interim water use issued under section 45-133.

(h) Surface water except central Arizona project water that, as determined by the director, physically occurs at such times, in such quantities or under such other circumstances that it cannot be physically captured and beneficially used by any other holder of an appropriative right.

5. The body of water is an integral part of a golf course ~~which~~ THAT complies with any applicable conservation requirements in the management plan for the active management area adopted under chapter 2, article 9 of this title.

6. The body of water is unsealed and is an integral part of an underground storage facility for which the director has issued a permit under chapter 3.1 of this title.

7. The body of water is a swimming pool that is owned and operated by a hotel, motel, country club or resort and has a surface area equal to or less than forty-three thousand five hundred sixty square feet. If a hotel, motel, country club or resort has more than one swimming pool, only one of those swimming pools may have a surface area greater than twelve thousand three hundred twenty square feet.

C. A person who seeks to use poor quality groundwater to fill or refill all or a portion of a body of water shall apply to the director for a permit to use the groundwater for that purpose. The director may issue a permit if the applicant demonstrates that all of the following apply:

1. The applicant otherwise has a right to use the proposed source of groundwater for the proposed purpose.

2. The groundwater because of its poor quality cannot be used for another beneficial purpose at the present time and it is not economically feasible to treat and transport the groundwater and use it for another beneficial purpose.

3. The withdrawal of the groundwater is consistent with the management plan and achievement of the management goal for the active management area.

D. A permit issued pursuant to subsection C of this section may be issued for a period of up to thirty-five years. The director shall determine the duration of the permit on the basis of the estimated life of the source of poor quality groundwater and the potential for future beneficial use. The director shall monitor the use of groundwater pursuant to the permit and shall terminate the permit if any of the conditions for issuance of the permit no longer applies. A permit may be renewed subject to the same criteria used in granting the original permit.

E. This section preempts all municipal and county laws, charters, ordinances, rules and regulations relating to the use of any water to fill or

refill all or a portion of a body of water, except that this section does not preempt a law, charter, ordinance, rule or regulation that has previously been adopted, passed or enacted or is subsequently adopted, passed or enacted if ~~the provisions of~~ the law, charter, ordinance, rule or regulation ~~are~~ IS more restrictive than ~~the provisions of~~ this section.

Sec. 10. Section 45-454.01, Arizona Revised Statutes, is amended to read:

45-454.01. Exemption of superfund remedial action activities; use requirements; definition

A. New well construction and withdrawal, treatment and reinjection OF GROUNDWATER into the aquifer ~~of groundwater~~ that occur as a part of and on the site of a remedial action undertaken pursuant to CERCLA are exempt from this chapter, except that:

1. A well that is exempt under this ~~section~~ SUBSECTION is subject to sections 45-594, 45-595, 45-596, ~~and~~ 45-600 AND 45-605, but no authorization to drill need be obtained before drilling.

2. If the groundwater that is withdrawn is not reinjected into the aquifer, the groundwater shall be put to reasonable and beneficial use.

3. A person who uses groundwater withdrawn in an active management area pursuant to this ~~section~~ SUBSECTION shall pay the groundwater withdrawal fee for the groundwater the person withdrew or received and shall use the groundwater only pursuant to articles 5 through 12 of this chapter. A city, town, private water company or irrigation district that serves groundwater pursuant to article 6 of this chapter is deemed to have used the groundwater for purposes of this paragraph.

B. NEW WELL CONSTRUCTION AND WITHDRAWAL, TREATMENT AND REINJECTION OF GROUNDWATER INTO THE AQUIFER THAT OCCUR AS PART OF A REMEDIAL ACTION RELATING TO METAL MINING ACTIVITIES OR A MITIGATION ORDER RELATING TO METAL MINING ACTIVITIES AND THAT ARE UNDERTAKEN PURSUANT TO TITLE 49, CHAPTER 2, ARTICLE 5 FOR THE PURPOSE OF PREVENTING THE MIGRATION OF A HAZARDOUS OR NONHAZARDOUS SUBSTANCE ARE EXEMPT FROM THIS CHAPTER, EXCEPT THAT:

1. A WELL THAT IS EXEMPT UNDER THIS SUBSECTION IS SUBJECT TO SECTIONS 45-594, 45-595, 45-596, 45-600 AND 45-605, BUT AUTHORIZATION TO DRILL IS NOT REQUIRED BEFORE DRILLING.

2. IF THE GROUNDWATER THAT IS WITHDRAWN IS NOT REINJECTED INTO THE AQUIFER, THE GROUNDWATER SHALL BE PUT TO REASONABLE AND BENEFICIAL USE. IF THE GROUNDWATER IS WITHDRAWN WITHIN AN ACTIVE MANAGEMENT AREA AND IS NOT REINJECTED INTO THE AQUIFER, THE GROUNDWATER SHALL BE PUT TO REASONABLE AND BENEFICIAL USE WITHIN THE SAME ACTIVE MANAGEMENT AREA AS FOLLOWS:

(a) AT THE METAL MINING FACILITY PURSUANT TO A GROUNDWATER WITHDRAWAL PERMIT ISSUED UNDER SECTION 45-514 OR A TYPE 2 NON-IRRIGATION GRANDFATHERED RIGHT ISSUED UNDER SECTION 45-464.

(b) AT ANOTHER LOCATION PURSUANT TO A GRANDFATHERED RIGHT ISSUED UNDER ARTICLE 5 OF THIS CHAPTER OR A SERVICE AREA RIGHT UNDER ARTICLE 6 OF THIS CHAPTER.

3. A PERSON WHO USES GROUNDWATER WITHDRAWN IN AN ACTIVE MANAGEMENT AREA PURSUANT TO THIS SUBSECTION SHALL PAY THE GROUNDWATER WITHDRAWAL FEE FOR THE GROUNDWATER THE PERSON WITHDREW OR RECEIVED. THE GROUNDWATER USE IS SUBJECT TO ARTICLES 8, 8.1, 9, 10, 11 AND 12 OF THIS CHAPTER. A CITY, TOWN, PRIVATE WATER COMPANY OR IRRIGATION DISTRICT THAT SERVES GROUNDWATER PURSUANT TO ARTICLE 6 OF THIS CHAPTER IS DEEMED TO HAVE USED THE GROUNDWATER FOR THE PURPOSES OF THIS PARAGRAPH.

~~B.~~ C. For THE purposes of this section, "CERCLA" means the comprehensive environmental response, compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections 9601 through 9657), commonly known as "superfund".

Sec. 11. Section 45-471, Arizona Revised Statutes, is amended to read:

45-471. Use of type 2 non-irrigation grandfathered right by owner

A. The owner of a type 2 non-irrigation grandfathered right pursuant to section 45-464 may use groundwater withdrawn pursuant to the right for any non-irrigation purpose at any location, subject to the provisions governing transportation of groundwater in article 8 of this chapter, except that, if the right is based on withdrawals of groundwater:

1. For the extraction or processing of minerals, the owner may use groundwater withdrawn pursuant to the right only for the purpose of mineral extraction or processing. FOR THE PURPOSES OF THIS ARTICLE, MINERAL EXTRACTION AND PROCESSING USE OF GROUNDWATER MEANS ALL WITHDRAWALS AND USES OF GROUNDWATER RELATED TO A MINING OPERATION INCLUDING COMPLIANCE WITH APPLICABLE ENVIRONMENTAL CONTROLS.

2. For the generation of electrical energy, the owner may use groundwater withdrawn pursuant to the right only for electrical energy generation.

B. The owner of a type 2 non-irrigation grandfathered right may withdraw groundwater pursuant to the right only from those wells listed on the certificate of grandfathered right.

C. The owner of a type 2 non-irrigation grandfathered right may request the director to issue a revised certificate to reflect new or additional points of withdrawal. If a proposed new or additional point of withdrawal is a well ~~which~~ THAT was drilled pursuant to a permit or notice of intention to drill filed after June 12, 1980, the owner shall demonstrate that the proposed withdrawals will not cause unreasonably increasing damage to surrounding land or other water users, and in the Santa Cruz active management area, that the proposed withdrawals will be consistent with the management plan for the active management area.

D. If a type 2 non-irrigation grandfathered right is leased, the lessee may use groundwater withdrawn pursuant to the right subject to ~~the provisions of~~ subsections A, B and C of this section.

Sec. 12. Section 45-544, Arizona Revised Statutes, is amended to read:

45-544. Transportation in areas not subject to active management; damages; upper San Pedro water district; Little Colorado river plateau, Parker and Coconino plateau groundwater basins; definitions

A. Except as otherwise provided in this section, section 45-547 and article 8.1 of this chapter, in areas outside of active management areas:

1. Groundwater may be transported:

(a) Within a subbasin of a groundwater basin or within a groundwater basin, if there are no subbasins, without payment of damages.

(b) Between subbasins of a groundwater basin, subject to payment of damages.

2. Groundwater shall not be transported away from a groundwater basin.

3. Groundwater shall not be transported away from the upper San Pedro water district if established under title 48, chapter 37.

B. Notwithstanding subsection A, paragraph 2 or 3 of this section, subject to payment of damages:

1. A person who at any time during the twelve months before January 1, 1991 was transporting away from the Little Colorado river plateau groundwater basin or the Parker groundwater basin groundwater that was legally withdrawn from a well in either groundwater basin has the right, subject to subsection C of this section, to transport groundwater that is legally withdrawn from the well or a replacement well in approximately the same location to another groundwater basin in an annual amount equal to the greater of the maximum amount of groundwater either:

(a) That was withdrawn from the well and transported by the person away from the groundwater basin in any one of the five calendar years immediately preceding January 1, 1991.

(b) That could have been withdrawn from the well during the twelve month period, taking into account the pump capacity and specific capacity of the well during that period, or twenty-five acre-feet, whichever is less.

2. A person may transport groundwater by motor vehicle from the Little Colorado river plateau groundwater basin or the Parker groundwater basin to an adjacent groundwater basin for domestic purposes or stock watering.

3. A city or town whose service area is located either in the Little Colorado river plateau groundwater basin and an adjacent groundwater basin or in the Parker groundwater basin and an adjacent groundwater basin may transport groundwater that is withdrawn within that portion of its service area located in the Little Colorado river plateau groundwater basin or the Parker groundwater basin to the adjacent groundwater basin for the benefit of landowners and residents within its service area.

4. A city, town or private water company whose service area is located in two adjacent groundwater basins and provides water utility service to landowners or residents in both basins as of July 1, 1993 may transport groundwater between those adjacent groundwater basins.

5. The transportation of groundwater in which groundwater is transported away from the groundwater basin and expansions of that transfer by the same person or its successor for the same purpose are valid if that transfer was occurring before September 1, 1993.

6. A city or town in the Coconino plateau groundwater basin with a population of not more than eight thousand persons that was transporting groundwater into its municipal water service area from an adjacent groundwater basin as of January 1, 2001, from wells that the director determines were erroneously drilled without knowledge that the wells were in the adjacent groundwater basin, may continue and expand that transfer subject to all of the following conditions:

(a) The groundwater may be withdrawn only from wells that are located not more than two miles from the Coconino plateau groundwater basin boundary and that are drilled to depths of at least two thousand five hundred feet below land surface.

(b) The groundwater may be used only within the municipal water service area of the city or town, and the city or town shall use available surface water supplies within its municipal water service area to the extent practicable.

(c) The total amount of groundwater that may be transported during a year shall not exceed seven hundred acre-feet, except that a city or town may apply to the director to increase the amount of groundwater that may be transported during a year under this subdivision if additional groundwater is needed to provide fire protection for the city or town because of an emergency condition. The director shall post an application filed under this subdivision on the department's website before approving or denying the application. The director shall approve an application filed under this subdivision if the city or town demonstrates to the satisfaction of the director that an emergency condition exists that makes it necessary for the city or town to transport groundwater in excess of the amount allowed under this subdivision to provide adequate fire protection for the city or town. If the director approves an application filed under this subdivision, the director shall specify the amount of groundwater that the city or town may transport in excess of the amount allowed under this subdivision and may impose other conditions that the director deems appropriate.

(d) The city or town shall no longer transport any groundwater pursuant to this paragraph if all of the following apply:

(i) After January 1, 2009, the city or town obtains the legal right to receive a new supply of water originating from outside of its corporate boundaries, other than groundwater pursuant to this paragraph.

(ii) The supply of water is physically available to the city or town through a canal or pipeline.

(iii) The director determines that the supply of water, together with other water supplies physically available to the city or town, other than groundwater pursuant to this paragraph, is sufficient to provide a

sustainable water supply for the city or town, including projected growth, and notifies the city or town of that determination.

7. Groundwater may be transported away from a groundwater basin for mineral extraction and processing, except that no groundwater may be transported away from the Parker groundwater basin or the Little Colorado river plateau groundwater basin for that purpose and, if the district is established, groundwater shall not be transported away from the upper San Pedro water district for that purpose except as provided in ~~paragraph~~ PARAGRAPHS ~~7~~ 8 AND 9 of this subsection.

8. If the upper San Pedro water district is established under title 48, chapter 37:

(a) A city, town or private water company whose service area is located in the district and a groundwater basin adjacent to the district, other than the upper San Pedro groundwater basin, and that provides water utility service to landowners or residents in the district and that adjacent groundwater basin as of July 1, 1993 may transport groundwater between the district and that adjacent groundwater basin.

(b) The transportation of groundwater in which groundwater is transported away from the district and away from the upper San Pedro groundwater basin and expansions of that transfer by the same person or its successor for the same purpose are valid if that transfer was occurring before September 1, 1993.

(c) The transportation of groundwater in which groundwater is transported away from the district but not away from the upper San Pedro groundwater basin and expansions of that transfer by the same person or its successor for the same purpose are valid if that transfer was occurring before the date the district is established.

9. A METAL MINING FACILITY THAT IS LOCATED IN BOTH THE UPPER SAN PEDRO AND DOUGLAS GROUNDWATER BASINS MAY TRANSPORT GROUNDWATER BETWEEN THE TWO BASINS TO THE EXTENT THAT THE TRANSPORTATION IS NECESSARY TO COMPLY WITH AN ORDER ISSUED BY THE DIRECTOR OF ENVIRONMENTAL QUALITY PURSUANT TO TITLE 49, CHAPTER 2, ARTICLE 5, INCLUDING AN ORDER ISSUED BY THE DIRECTOR OF ENVIRONMENTAL QUALITY PURSUANT TO SECTION 49-286. BEFORE TRANSPORTING GROUNDWATER PURSUANT TO THIS PARAGRAPH, A METAL MINING FACILITY SHALL GIVE WRITTEN NOTICE TO THE DIRECTOR OF WATER RESOURCES, WHICH SHALL INCLUDE A COPY OF THE ORDER REQUIRING THE REMEDIAL ACTION OR MITIGATION ACTIVITIES.

C. The director may limit by order the amount of groundwater withdrawn from a well in the Little Colorado river plateau groundwater basin for transportation away from the basin pursuant to subsection B, paragraph 1 of this section in any year in which the director determines that the projected withdrawals from the well for that purpose will unreasonably increase damage to surrounding land or other water users and if the well:

1. Was drilled on or before January 1, 1991.

2. Was not completed on January 1, 1991, but a notice of intention to drill the well was on file on that date.

3. Is a replacement well, in approximately the same location, for a well described in paragraph 1 or 2 of this subsection.

D. Groundwater may be withdrawn from a well drilled in the Little Colorado river plateau groundwater basin after January 1, 1991, except a replacement well in approximately the same location or a well drilled after that date pursuant to a notice of intention to drill that was on file with the department on that date, for transportation away from the basin pursuant to subsection B, paragraph 1 of this section only if the location of the well complies with the rules adopted pursuant to section 45-598, subsection A to prevent unreasonably increasing damage to surrounding land or other water users from the concentration of wells.

E. For the purposes of this section:

1. "Domestic purposes" means uses related to the supply, service and activities of households and private residences and includes the application of water to less than two acres of land to produce plants or parts of plants for sale or human consumption, or for use as feed for livestock, range livestock or poultry, as such terms are defined in section 3-1201.

2. "Stock watering" means the watering of livestock, range livestock or poultry, as such terms are defined in section 3-1201.

Sec. 13. Section 45-596, Arizona Revised Statutes, is amended to read:

45-596. Notice of intention to drill; fee

A. In an area not subject to active management, a person may not drill or cause to be drilled any well or deepen an existing well without first filing notice of intention to drill pursuant to subsection C of this section or obtaining a permit pursuant to section 45-834.01. Only one notice of intention to drill is required for all wells that are drilled by or for the same person to obtain geophysical, mineralogical or geotechnical data within a single section of land.

B. In an active management area, a person may not drill or cause to be drilled an exempt well, a replacement well in approximately the same location or any other well for which a permit is not required under this article, article 7 of this chapter or section 45-834.01 or deepen an existing well without first filing a notice of intention to drill pursuant to subsection C of this section. Only one notice of intention to drill is required for all wells that are drilled by or for the same person to obtain geophysical, mineralogical or geotechnical data within a single section of land.

C. A notice of intention to drill shall be filed with the director on a form ~~which~~ THAT is prescribed and furnished by the director and ~~which~~ THAT shall include:

1. The name and mailing address of the person filing the notice.

2. The legal description of the land ~~upon~~ ON which the well is proposed to be drilled and the name and mailing address of the owner of the land.

3. The legal description of the location of the well on the land.

4. The depth, diameter and type of casing of the proposed well.

5. Such legal description of the land ~~upon~~ ON which the groundwater is proposed to be used as may be required by the director to administer this chapter.

6. When construction is to begin.

7. The proposed uses to which the groundwater will be applied.

8. The name and well driller's license number of the well driller who is to construct the well.

9. The design pumping capacity of the well.

10. If for a replacement well, the maximum capacity of the original well and the distance of the replacement well from the original well.

11. Proof that the director determines to be satisfactory that the person proposing to construct the well holds a valid license issued by the registrar of contractors pursuant to title 32, chapter 10 and that the license is of the type necessary to construct the well described in the notice of intention to drill. If the proposed well driller does not hold a valid license, the director may accept proof that the proposed well driller is exempt from licensing as prescribed by section 32-1121.

12. If any water from the proposed well will be used for domestic purposes as defined in section 45-454, evidence of compliance with the requirements of subsection F of this section.

13. If for a second exempt well at the same location for the same use pursuant to section 45-454, subsection I, proof that the requirements of that subsection are met.

14. If for a well to obtain geophysical, mineralogical or geotechnical data within a single section of land, the information prescribed by this subsection for each well that will be included in that section of land before each well is drilled.

15. Such other information as the director may require.

D. ~~Upon~~ ON receiving a notice of intention to drill and the fee required by subsection L of this section, the director shall endorse on the notice the date of its receipt. The director shall then determine whether all information that is required has been submitted and whether the requirements of subsection C, paragraphs 11 and 12 and subsection I of this section have been met. If so, within fifteen days of receipt of the notice, or such longer time as provided in subsection J of this section, the director shall record the notice, mail a drilling card that authorizes the drilling of the well to the well driller identified in the notice and mail written notice of the issuance of the drilling card to the person filing the notice of intention to drill at the address stated in the notice. ~~Upon~~ ON receipt of the drilling card, the well driller may proceed to drill or deepen the well as described in the notice of intention to drill. If the director determines that the required information has not been submitted or that the requirements of subsection C, paragraphs 11 and 12 or subsection I of this section have not been met, the director shall mail a statement of the determination to the

person giving the notice to the address stated in the notice, and the person giving the notice may not proceed to drill or deepen the well.

E. The well shall be completed within one year after the date of the notice unless the director approves a longer period of time pursuant to this subsection. If the well is not completed within one year or within the time approved by the director pursuant to this subsection, the person shall file a new notice before proceeding with further construction. At the time the drilling card for the well is issued, the director may provide for and approve a completion period that is greater than one year but not to exceed five years from the date of the notice if both of the following apply:

1. The proposed well is a nonexempt well within an active management area and qualifies as a replacement well in approximately the same location as prescribed in rules adopted by the director pursuant to section 45-597.

2. The applicant has submitted evidence that demonstrates one of the following:

(a) This state or a political subdivision of this state has acquired or has begun a condemnation action to acquire the land on which the original well is located.

(b) The original well has been rendered inoperable due to flooding, subsidence or other extraordinary physical circumstances that are beyond the control of the well owner.

F. If any water from a proposed well will be used for domestic purposes as defined in section 45-454 on a parcel of land of five or fewer acres, the applicant shall submit a well site plan of the property with the notice of intention to drill. The site plan shall:

1. Include the county assessor's parcel identification number.

2. Show the proposed well location and the location of any septic tank or sewer system that is either located on the property or within one hundred feet of the proposed well site.

3. Show written approval by the county health authority that controls the installation of septic tanks or sewer systems in the county, or by the local health authority in areas where the authority to control installation of septic tanks or sewer systems has been delegated to a local authority. In areas where there is no local or county authority that controls the installation of septic tanks or sewer systems, the applicant shall apply for approval directly to the department of water resources.

G. Before approving a well site plan submitted pursuant to subsection F of this section, the county or local health authority or the department of water resources, as applicable, pursuant to subsection F of this section, shall review the well site plan and determine whether the proposed well location complies with applicable local laws, ordinances and regulations and any laws or rules adopted under this title and title 49 regarding the placement of wells and the proximity of wells to septic tanks or sewer systems. If the health authority or the department of water resources, as applicable, pursuant to subsection F of this section, finds that the proposed

well location complies with this title and title 49 and with local requirements, it shall endorse the site plan and the proposed well placement in a manner indicating approval. On endorsement, the director of water resources shall approve the construction of the well, if all remaining requirements have been met. If the health authority is unable to determine whether the proposed well location complies with this title and title 49 and local requirements, it shall indicate this on the site plan and the decision to approve or reject the proposed construction rests with the director of water resources. If parcel size, geology or location of improvements on the property prevents the well from being drilled in accordance with this title and title 49 or local requirements, the property owner may apply for a variance. The property owner shall make the request for a variance to the county or local authority if a county or local law, ordinance or regulation prevents the proposed construction. If a law or rule adopted under this title or title 49 prevents the proposed construction, the property owner shall make the request for a variance directly to the department of water resources. The request for a variance shall be in the form and shall contain the information that the department of water resources, county or local authority may require. The department of water resources, or the county or local authority whose law, ordinance or regulation prevents the proposed construction, may expressly require that a particular variance shall include certification by a registered professional engineer or geologist that the location of the well will not pose a health hazard to the applicant or surrounding property or inhabitants. If all necessary variances are obtained, the director of water resources shall approve the construction of the well if all remaining requirements have been met.

H. If a well that was originally drilled as an exploration well, a monitor well or a piezometer well or for any use other than domestic use is later proposed to be converted to use for domestic purposes as defined in section 45-454, the well owner shall file a notice of intention to drill and shall comply with this section before the well is converted and any water from that well is used for domestic purposes.

I. Except as prescribed in subsection K of this section, the director shall not approve the drilling of the well if the director determines that the well will likely cause the migration of contaminated groundwater from a remedial action site to another well, resulting in unreasonably increasing damage to the owner of the well or persons using water from the well. In making this determination, the director of water resources shall follow the applicable criteria in the rules adopted by the director of water resources pursuant to section 45-598, subsection A and shall consult with the director of environmental quality. For the purposes of this subsection:

1. "Contaminated groundwater" means groundwater that has been contaminated by a release of a hazardous substance, as defined in section 49-201, or a pollutant, as defined in section 49-201.

2. "Remedial action site" means any of the following:

(a) The site of a remedial action undertaken pursuant to the comprehensive environmental response, compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections 9601 through 9657), commonly known as "superfund".

(b) The site of a corrective action undertaken pursuant to title 49, chapter 6.

(c) The site of a voluntary remediation action undertaken pursuant to title 49, chapter 1, article 5.

(d) The site of a remedial action undertaken pursuant to title 49, chapter 2, article 5, INCLUDING MITIGATION OF A NONHAZARDOUS RELEASE UNDERTAKEN PURSUANT TO AN ORDER ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO SECTION 49-286.

(e) The site of a remedial action undertaken pursuant to the resource conservation and recovery act of 1976 (P.L. 94-580; 90 Stat. 2795; 42 United States Code sections 6901 through 6992).

(f) The site of remedial action undertaken pursuant to the department of defense environmental restoration program (P.L. 99-499; 100 Stat. 1719; 10 United States Code section 2701).

J. Except as prescribed in subsection K of this section, the director shall approve or deny the drilling of a well within forty-five days after receipt of the notice of intention to drill if one of the following applies:

1. The proposed well is located within a remedial action site.

2. The proposed well is located within one mile of any of the following remedial action sites:

(a) A remedial action undertaken pursuant to title 49, chapter 2, article 5, INCLUDING MITIGATION OF A NONHAZARDOUS RELEASE UNDERTAKEN PURSUANT TO AN ORDER ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO SECTION 49-286.

(b) A remedial action undertaken pursuant to the comprehensive environmental response, compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections 9601 through 9657), commonly known as "superfund".

(c) A remedial action undertaken pursuant to the department of defense environmental restoration program (P.L. 99-499; 100 Stat. 1719; 10 United States Code section 2701).

3. The proposed well is located within one-half mile of either of the following remedial action sites:

(a) A remedial action undertaken pursuant to title 49, chapter 1, article 5.

(b) A remedial action undertaken pursuant to the resource conservation and recovery act of 1976 (P.L. 94-580; 90 Stat. 2795; 42 United States Code sections 6901 through 6992).

4. The proposed well is located within five hundred feet of the site of a corrective action undertaken pursuant to title 49, chapter 6.

K. Subsections I and J of this section do not apply to the deepening of a well or to the drilling of a replacement well in approximately the same location.

L. A notice of intention to drill filed under this section shall be accompanied by a filing fee of one hundred fifty dollars, except that a notice filed for a proposed well that will not be located within an active management area or an irrigation nonexpansion area, that will be used solely for domestic purposes as defined in section 45-454 and that will have a pump with a maximum capacity of not more than thirty-five gallons per minute shall be accompanied by a filing fee of one hundred dollars. The director shall deposit, pursuant to sections 35-146 and 35-147, all fees collected pursuant to this subsection in the well administration and enforcement fund established by section 45-606.

Sec. 14. Section 49-104, Arizona Revised Statutes, is amended to read:

49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.

2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.

3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.

4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.

5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.

6. Promote and coordinate the management of air resources to assure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.

7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.

8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.

9. Assure the preservation and enhancement of natural beauty and man-made scenic qualities.

10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise,

radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies.

12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.

13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.

14. Assist the department of health services in recruiting and training state, local and district health department personnel.

15. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

16. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

17. UNLESS SPECIFICALLY AUTHORIZED BY THE LEGISLATURE, ENSURE THAT STATE LAWS, RULES, STANDARDS, PERMITS, VARIANCES AND ORDERS ARE ADOPTED AND CONSTRUED TO BE CONSISTENT WITH AND NO MORE STRINGENT THAN THE CORRESPONDING FEDERAL LAW THAT ADDRESSES THE SAME SUBJECT MATTER. THIS PROVISION SHALL NOT BE CONSTRUED TO ADVERSELY AFFECT STANDARDS ADOPTED BY AN INDIAN TRIBE UNDER FEDERAL LAW.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at such places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection H, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules shall:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and title 26, chapter 2, article 3.

16. Approve remediation levels pursuant to article 4 of this chapter.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ~~insure~~ ENSURE compliance with rules adopted under section 49-203, subsection A, paragraph 6, except that state agencies are exempt from paying the fees. Monies collected pursuant to this subsection shall be deposited in the water quality fee fund established by section 49-210.

2. CONTRACT WITH PRIVATE CONSULTANTS FOR THE PURPOSES OF ASSISTING THE DEPARTMENT IN REVIEWING APPLICATIONS FOR LICENSES, PERMITS OR OTHER AUTHORIZATIONS TO DETERMINE WHETHER AN APPLICANT MEETS THE CRITERIA FOR

ISSUANCE OF THE LICENSE, PERMIT OR OTHER AUTHORIZATION. IF THE DEPARTMENT CONTRACTS WITH A CONSULTANT UNDER THIS PARAGRAPH, AN APPLICANT MAY REQUEST THAT THE DEPARTMENT EXPEDITE THE APPLICATION REVIEW BY REQUESTING THAT THE DEPARTMENT USE THE SERVICES OF THE CONSULTANT AND BY AGREEING TO PAY THE DEPARTMENT THE COSTS OF THE CONSULTANT'S SERVICES. NOTWITHSTANDING ANY OTHER LAW, MONIES PAID BY APPLICANTS FOR EXPEDITED REVIEWS PURSUANT TO THIS PARAGRAPH ARE APPROPRIATED TO THE DEPARTMENT FOR USE IN PAYING CONSULTANTS FOR SERVICES.

D. The director may:

1. If ~~he~~ THE DIRECTOR has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

Sec. 15. Section 49-109, Arizona Revised Statutes, is amended to read:

49-109. Certificate of disclosure of violations; remedies

A. The following persons shall file a certificate of disclosure with the department as prescribed by this section:

1. A person who is engaged in an activity subject to regulation under this title and who has been convicted of a felony involving laws related to solid waste, special waste, hazardous waste, water quality or air quality in any state or federal jurisdiction or for a violation of 42 United States Code section 9603 within the five year period immediately preceding execution of the certificate.

2. EXCEPT IN PROCEEDINGS IN WHICH THE DEPARTMENT, OR THIS STATE ON BEHALF OF THE DEPARTMENT, IS OR WAS A PARTY, a person who is engaged in an activity subject to regulation under this title and who is or has been subject in any civil proceeding to an injunction, decree, judgment or permanent order of any state or federal court within the five year period immediately preceding the execution of the certificate that involved a violation of laws of that jurisdiction relating to solid waste, special waste, hazardous waste, used oil or used oil fuel, petroleum, water quality or air quality, except for a misdemeanor violation of section 49-550, or a violation of 42 United States Code section 9603.

B. The certificate of disclosure prescribed by subsection A of this section shall contain the following:

1. Identification of that person, including without limitation present full name, all prior names or aliases, including full birth name, present house address and all prior addresses for the immediately preceding five year period, date and location of birth and social security number.

2. The nature and description of each conviction or judicial action, the date and location, the court and public agency involved, and the file or cause number of the case.

3. A written declaration that each signer swears to its contents under penalty of perjury.

C. The certificate of disclosure submitted on behalf of a corporation shall be executed by any two executive officers or directors of that corporation.

D. For purposes of subsection A of this section, "person" means a natural person, any public or private corporation, its officers, directors, trustees, incorporators and persons controlling or holding over ten per cent of the issued and outstanding common shares or ten per cent of any other proprietary, beneficial or membership interest in the corporation, a partnership, including all general partners and limited partners controlling a ten per cent or more beneficial interest in the partnership, association or society of persons, the federal government and any of its departments or agencies, this state and any of its agencies, departments, political subdivisions, counties, towns or municipal corporations.

E. Initial certificates shall be delivered to the department within ninety days after the person first becomes subject to the disclosure requirements of this section. Certificates shall be filed annually thereafter within ninety days after the close of that person's fiscal year as reported on the initial certificate.

F. By December 1 of each year, the department shall provide the attorney general with a list of all persons who were convicted of the crimes or who are the subject of the judicial actions described in subsection A of this section, as indicated from the certificates of disclosure filed during the preceding year.

G. In lieu of the certificate of disclosure prescribed by this section, a corporation may submit to the director copies of annual reports filed with the securities and exchange commission pursuant to section 13 or 15(d) of the securities exchange act of 1934 (15 United States Code section 78), commonly known as a "10-K form", within ninety days of filing the annual report. The initial submission to the director shall include 10-K forms for the preceding five years.

H. A person who contributes information for a certificate of disclosure and who makes an untrue statement of material fact concerning the requirements of subsection B of this section or withholds any material fact concerning the requirements of subsection B of this section or a person who is obligated to file a certificate of disclosure and who fails to file the certificate is subject to the remedies prescribed in section 49-110.

Sec. 16. Section 49-241, Arizona Revised Statutes, is amended to read:

49-241. Permit required to discharge

A. Unless otherwise provided by this article, any person who discharges or who owns or operates a facility that discharges shall obtain an aquifer protection permit from the director.

B. Unless exempted under section 49-250, or unless the director determines that the facility will be designed, constructed and operated so that there will be no migration of pollutants directly to the aquifer or to the vadose zone, the following are considered to be discharging facilities and shall be operated pursuant to either an individual permit or a general permit, including agricultural general permits, under this article:

1. Surface impoundments, including holding, storage settling, treatment or disposal pits, ponds and lagoons.

2. Solid waste disposal facilities except for mining overburden and wall rock that has not been and will not be subject to mine leaching operations.

3. Injection wells.

4. Land treatment facilities.

5. Facilities ~~which~~ THAT add a pollutant to a salt dome formation, salt bed formation, dry well or underground cave or mine.

6. Mine tailings piles and ponds.

7. Mine leaching operations.

8. Underground water storage facilities.

~~9. Point source discharges to navigable waters.~~

~~10.~~ 9. Sewage treatment facilities, including on-site wastewater treatment facilities.

~~11.~~ 10. Wetlands designed and constructed to treat municipal and domestic wastewater for underground storage.

C. The director shall provide public notice and an opportunity for public comment on any request for a determination from the director under subsection B of this section that there will be no migration of pollutants from a facility. A public hearing may be held at the discretion of the director if sufficient public comment warrants a hearing. The director may inspect and may require reasonable conditions and appropriate monitoring and reporting requirements for a facility managing pollutants that are determined not to migrate under subsection B of this section. The director may identify types of facilities, available technologies and technical criteria for facilities that will qualify for such a determination. The director's determination may be revoked on evidence that pollutants have migrated from the facility. The director may impose a review fee for a determination under subsection B of this section. Any issuance, denial or revocation of a determination may be appealed pursuant to section 49-323.

D. The director shall publish a list of the names and locations of existing facilities that are required to obtain an aquifer protection permit. The director may revise the list as needed. Any revised list shall contain

deadlines for the submittal of applications for aquifer protection permits, based on the degree of risk to the public health and welfare and the environment and based on a work plan of the director designed to process all applications for an aquifer protection permit no later than January 1, 2004 for nonmining facilities and no later than January 1, 2006 for mining facilities.

E. The director shall annually make the fee schedule for aquifer protection permit applications available to the public on request and on the department's ~~web site~~ WEBSITE, and a list of the names and locations of the facilities that have filed applications for aquifer protection permits, with a description of the status of each application, shall be available to the public on request.

F. The director shall prescribe the procedures for aquifer protection permit applications and fee collection under this section. The director shall deposit, pursuant to sections 35-146 and 35-147, all monies collected under this section in the water quality fee fund established by section 49-210 and may authorize expenditures from the fund, subject to legislative appropriation, to pay reasonable and necessary costs of processing and issuing permits and administering the registration program.

Sec. 17. Section 49-243, Arizona Revised Statutes, is amended to read:

49-243. Information and criteria for issuing individual permit; definition

A. The director shall consider, and the applicant for an individual permit may be required to furnish with the application, the following information:

1. The design of the discharge facility. When formal as-built submittals are unavailable, the applicant shall provide sufficient documentation to allow evaluation of those elements of the facility affecting discharge pursuant to the demonstration required in subsection B, paragraph 1 of this section.

2. A description of how the facility will be operated.

3. Existing and proposed pollutant control measures.

4. A hydrogeologic study defining and characterizing the discharge impact area, including the vadose zone.

5. The use of water from aquifers in the discharge impact area.

6. The existing quality of the water in the aquifers in the discharge impact area.

7. The characteristics of the pollutants discharged by the facility.

8. Closure strategy.

9. Any other relevant federal or state permits issued to the applicant.

10. Any other relevant information the director may require.

B. The director shall issue a permit to a person for a facility other than water storage at a storage facility pursuant to title 45, chapter 3.1 if

the person demonstrates that either paragraphs 1 and 2 or paragraphs 1 and 3 of this subsection will be met:

1. That the facility will be so designed, constructed and operated as to ensure the greatest degree of discharge reduction achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives, including, where practicable, a technology permitting no discharge of pollutants. In determining best available demonstrated control technology, processes, operating methods or other alternatives, the director shall take into account any treatment process contributing to the discharge, site specific hydrologic and geologic characteristics and other environmental factors, the opportunity for water conservation or augmentation and economic impacts of the use of alternative technologies, processes or operating methods on an industry-wide basis. A discharge reduction to an aquifer achievable solely by means of site specific characteristics does not, in itself, constitute compliance with this paragraph. The requirements of this paragraph for wetlands designed and constructed to treat municipal and domestic wastewater for underground storage pursuant to section 49-241, subsection B~~, paragraph 11~~ may be met by including seepage through the bottom of the facility if it is demonstrated that site characteristics can act to achieve performance levels established as the best available demonstrated control technology by the director. In addition, the director shall consider the following factors for existing facilities:

(a) Toxicity, concentrations and quantities of discharge likely to reach an aquifer from various types of control technologies.

(b) The total costs of the application of the technology in relation to the discharge reduction to be achieved from such application.

(c) The age of equipment and facilities involved.

(d) The industrial and control process employed.

(e) The engineering aspects of the application of various types of control techniques.

(f) Process changes.

(g) Non-water quality environmental impacts.

(h) The extent to which water available for beneficial uses will be conserved by a particular type of control technology.

2. That pollutants discharged will in no event cause or contribute to a violation of aquifer water quality standards at the applicable point of compliance for the facility.

3. That no pollutants discharged will further degrade at the applicable point of compliance the quality of any aquifer that at the time of the issuance of the permit violates the aquifer quality standard for that pollutant.

C. An applicant shall satisfy the requirements of subsection B, paragraph 1 of this section either by making a demonstration that the facility will meet the criteria of that paragraph or by agreeing to utilize

the appropriate presumptive controls adopted by the director pursuant to section 49-243.01, subsection A.

D. In assessing technology, processes, operating methods and other alternatives for THE purposes of this section, "practicable" means able to be reasonably done from the standpoint of technical practicality and, except for pollutants addressed in subsection I of this section, economically achievable on an industry-wide basis.

E. The determination of economic impact on an industry-wide basis for purposes of subsection B, paragraph 1 of this section shall take into account differences in industry sectors, the type and size of the operation and the reasonableness of applying controls in an arid or semiarid setting.

F. Control measures designed to further reduce discharge may not be required if the director determines that site specific conditions, in conjunction with technology, processes, operating methods or other alternatives are sufficient to meet the requirements of subsection B, paragraph 1 of this section.

G. A discharging facility at an open pit mining operation shall be deemed to satisfy the requirements of subsection B, paragraph 1 of this section if the director determines that both of the following conditions are satisfied:

1. The mine pit creates a passive containment that is sufficient to capture the pollutants discharged and that is hydrologically isolated to the extent that it does not allow pollutant migration from the capture zone. For THE purposes of this paragraph, "passive containment" means natural or engineered topographical, geological or hydrological control measures that can operate without continuous maintenance. Monitoring and inspections to confirm performance of the passive containment do not constitute maintenance.

2. The discharging facility employs additional processes, operating methods or other alternatives to minimize discharge.

H. The director shall issue a permit to a person for water storage at a storage facility proposed under title 45, chapter 3.1 if the person demonstrates that the facility will be so designed, constructed and operated as to ensure that the project will not cause or contribute to the violation of any standard adopted pursuant to section 49-223 at the applicable point of compliance for the facility.

I. With respect to the following pollutants, the permit applicant for a new facility must meet the criteria of subsection B, paragraph 1 of this section to limit discharges to the maximum extent practicable regardless of cost:

1. Any organic substance listed by the secretary of the department of health and human services pursuant to 42 United States Code section 241 (b)(4), as known to be carcinogens or reasonably anticipated to be carcinogens.

2. Any organic substance listed in 40 Code of Federal Regulations section 261.33(e), regardless of whether the substance is a waste subject to

regulation under the resource conservation recovery act (P.L. 94-580; 90 Stat. 2795).

3. Any organic toxic pollutant that the director lists by rule after determining that minute amounts of that pollutant in drinking water will present a substantial short-term or long-term human health threat.

J. The director ~~may~~, by rule, MAY prescribe requirements for issuing a single permit applicable to all similar facilities under common ownership and located in a contiguous geographic area in lieu of an individual permit for each facility.

K. The director shall consider and may prescribe in the permit the following terms and conditions as necessary to ensure compliance with this article:

1. Monitoring requirements.

2. Record keeping and reporting requirements.

3. Contingency plan requirements.

4. Discharge limitations.

5. Compliance schedule requirements.

6. Closure requirements and, for a facility that cannot achieve clean closure, postclosure monitoring and maintenance requirements.

7. Alert levels ~~which~~ THAT, when exceeded, may require adjustments of permit conditions or appropriate actions as are required by the contingency plans.

8. Such other terms and conditions as the director deems necessary to ensure compliance with this article.

L. The director may include in an aquifer protection permit for an existing facility the requirement that the owner or operator of the facility undertake a remedial action, as defined in section 49-281, to prevent, minimize or mitigate damage to the public health or welfare or to the waters of the state resulting from a discharge that occurred before August 13, 1986, if the following conditions are met:

1. The selection of remedial action, including the level and extent of cleanup, was determined according to the criteria in section 49-282.06~~,~~ and the rules adopted pursuant to that section.

2. The pollutant that was discharged constituted a hazardous substance.

M. The director may include in an aquifer protection permit as a condition the mitigation measures described in an order issued under section 49-286.

N. The director may deny a permit for a facility if ~~he~~ THE DIRECTOR determines that the applicant is incapable of fully carrying out the terms and conditions of the permit, including any conditions that require monitoring or installing and maintaining discharge control measures. The director may require the applicant to furnish information, such as past performance, including compliance with or violations of similar laws or rules, and technical and financial competence, relevant to its capability to

comply with the permit terms and conditions. For the purposes of evaluating an applicant's financial competence for closure, the director may consider a closure strategy and cost estimate rather than a detailed closure plan. A demonstration of financial responsibility made for a facility as prescribed by section 49-770 shall suffice, in whole or in part, for any demonstration of financial responsibility prescribed by this section. A demonstration of financial assurance or competence required under this section or section 49-770 for a facility shall not be required ~~prior to~~ BEFORE completion of construction but shall be required before the department issues approval to operate. Financial information required to be supplied under this subsection is confidential.

O. The director shall require an applicant for an individual permit to submit evidence that the discharging facility complies with applicable municipal or county zoning ordinances and regulations. The director shall not issue the permit unless it appears from the evidence submitted by the applicant that the facility complies with the applicable zoning ordinances and regulations.

P. The director may issue a single area-wide permit applicable to facilities under common ownership and located in a contiguous geographic area in lieu of an individual permit for each facility. In issuing an area-wide permit, the demonstration required under subsection B, paragraphs 2 and 3 of this section may be considered collectively for all facilities included in the permit. The director may evaluate discharge reduction collectively for existing facilities in the pollutant management area by considering any one or all of the factors set forth in subsection B, paragraph 1~~, subdivisions (a) through (h)~~ of this section. The director may consolidate those permit conditions listed in subsection K of this section that have general applicability to the facilities included in the area-wide permit. An area-wide permit shall specify all of the following:

1. A description of the pollutant management area and point or points of compliance.

2. Those facilities that have been evaluated individually for meeting the criteria in subsection B, paragraph 1 of this section and THAT are included in the area-wide permit.

3. For multiple facilities within the pollutant management area that are substantially similar in nature and, considered alone, would have a small discharge impact area compared to other facilities in the area, narrative permit conditions may be used to define the best available demonstrated control technology, processes, operating methods or other alternatives consistent with subsection B, paragraph 1 of this section replacing the need for an individual technical review.

4. A compliance schedule for submittal and evaluation of information regarding design and discharge for existing facilities within the pollutant management area that, because of the small size, quantity or quality of discharge, or physical location with regard to the point or points of

compliance, the director has determined that review for the purposes of subsection B, paragraph 1 of this section shall be conducted in the future. In determining the requirements and length of a compliance schedule for an area-wide permit, the director shall consider the character and impact of the discharge, the nature of the activities necessary to prepare appropriate technical submittals, the number of persons potentially affected by the discharge, the current state of treatment technology, and the age of the facility.

Q. The director may expedite processing of an aquifer protection permit application by a permit applicant who proposes a new facility to discharge liquids that do not contain any pollutant in a concentration that exceeds a numeric aquifer water quality standard. The director shall not require the applicant to complete a hydrogeologic study in order to obtain the permit unless the permit applicant is relying on site specific characteristics to meet the requirements of subsection B, paragraph 1 of this section or unless the study is necessary to demonstrate compliance with narrative aquifer water quality standards. Applications made pursuant to this subsection shall have precedence and be considered by the department before all other aquifer protection permit applications.

Sec. 18. Section 49-245.01, Arizona Revised Statutes, is amended to read:

49-245.01. Storm water general permit

A. A general permit is issued for facilities used solely for the management of storm water and that are regulated by the clean water act, including catchments, impoundments and sumps, provided the following conditions are met:

1. The owner or operator of the facility has obtained a national pollutant discharge elimination system permit issued pursuant to the clean water act for any storm water discharges at the facility, or that the facility has applied, and not been denied coverage, for this type of permit for any storm water discharges at the facility.

2. The owner or operator notifies the director that the facility has met the requirements of paragraph 1 of this subsection.

3. The owner or operator of the facility has in place any required storm water pollution prevention plan.

B. If the director determines that discharges of storm water from a facility or facilities covered by this general permit are causing a violation of aquifer water quality standards AT THE APPLICABLE POINT OF COMPLIANCE, the director may revoke the general permit of the facility or facilities or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges of storm water from a facility or facilities covered by this general permit ~~may~~, with reasonable probability, MAY cause a violation of aquifer water quality standards AT THE APPLICABLE POINT OF COMPLIANCE, the director may require a facility or facilities

covered by the general permit to obtain an individual permit pursuant to section 49-243.

Sec. 19. Title 49, chapter 2, article 5, Arizona Revised Statutes, is amended by adding section 49-290.02, to read:

49-290.02. Applicability of Arizona department of water resources requirements; metal mining facilities

A. A METAL MINING FACILITY CONDUCTING MITIGATION ACTIVITIES PURSUANT TO AN ORDER ISSUED BY THE DIRECTOR OF ENVIRONMENTAL QUALITY PURSUANT TO SECTION 49-286 SHALL OBTAIN AND COMPLY WITH APPLICABLE PERMITS, APPROVALS OR OTHER AUTHORIZATIONS REQUIRED BY THE DEPARTMENT OF WATER RESOURCES. ON CONSULTATION WITH THE DIRECTOR OF ENVIRONMENTAL QUALITY, THE DIRECTOR OF WATER RESOURCES MAY WAIVE ITS APPLICABLE PERMITS, APPROVALS OR AUTHORIZATIONS IF THE DIRECTOR OF WATER RESOURCES DETERMINES THAT THE PERMIT, APPROVAL OR OTHER AUTHORIZATION UNREASONABLY LIMITS THE COMPLETION OF MITIGATION ACTIVITIES UNDERTAKEN BY A METAL MINING FACILITY PURSUANT TO AN ORDER ISSUED PURSUANT TO SECTION 49-286 AND IF THE WAIVER DOES NOT CONFLICT WITH THE STATUTORY INTENT OF THE PERMIT, APPROVAL OR OTHER AUTHORIZATION. THE DEPARTMENT OF WATER RESOURCES SHALL EXPEDITE THE PROCESSING AND ISSUANCE OF PERMITS, APPROVALS OR AUTHORIZATIONS TO FACILITATE THE PROMPT CONDUCT OF APPROVED MITIGATION ACTIVITIES UNDERTAKEN BY A METAL MINING FACILITY PURSUANT TO AN ORDER ISSUED PURSUANT TO SECTION 49-286. IF THE DEPARTMENT OF WATER RESOURCES FAILS TO ISSUE OR DENY A PERMIT WITHIN ONE HUNDRED TWENTY DAYS OF THE DATE OF RECEIPT OF A COMPLETE APPLICATION FOR A PERMIT, APPROVAL OR AUTHORIZATION REQUIRED FOR COMPLETION OF THE MITIGATION ACTIVITIES APPROVED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO AN ORDER ISSUED PURSUANT TO SECTION 49-286, THE DEPARTMENT OF ENVIRONMENTAL QUALITY MAY AUTHORIZE THE METAL MINING FACILITY CONDUCTING THE APPROVED MITIGATION ACTIVITIES TO PROCEED WITH THOSE ACTIVITIES AND THAT METAL MINING FACILITY SHALL NOT BE SUBJECT TO ANY PENALTIES FOR FAILURE TO OBTAIN THE PERMIT, APPROVAL OR AUTHORIZATION FROM THE DEPARTMENT OF WATER RESOURCES, BUT SHALL BE REQUIRED TO COMPLY WITH THE SUBSTANTIVE REQUIREMENTS OF SUCH PERMIT, APPROVAL OR AUTHORIZATION. THE DETERMINATION OF WHETHER AN APPLICATION FOR A PERMIT IS COMPLETE SHALL BE MADE BY THE DEPARTMENT OF WATER RESOURCES. A METAL MINING FACILITY CONDUCTING MITIGATION ACTIVITIES PURSUANT TO AN ORDER ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO SECTION 49-286 THAT USES GROUNDWATER WITHDRAWN IN AN ACTIVE MANAGEMENT AREA SHALL CONTINUE TO PAY ANY APPLICABLE GROUNDWATER WITHDRAWAL FEE FOR THE GROUNDWATER THE METAL MINING FACILITY WITHDREW AND USED OR RECEIVED AND USED.

B. THE DIRECTOR OF ENVIRONMENTAL QUALITY AND THE DIRECTOR OF WATER RESOURCES SHALL COORDINATE THEIR EFFORTS TO EXPEDITE MITIGATION ACTIVITIES UNDERTAKEN BY A METAL MINING FACILITY PURSUANT TO AN ORDER ISSUED PURSUANT TO SECTION 49-286, INCLUDING OBTAINING INFORMATION PERTINENT TO SITE INVESTIGATIONS, SITE MANAGEMENT AND BENEFICIAL USE OF WATER WITHDRAWN FOR MITIGATION PURPOSES.

C. WITH RESPECT TO MITIGATION ACTIVITIES UNDERTAKEN BY A METAL MINING FACILITY PURSUANT TO AN ORDER ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO SECTION 49-286, THE DIRECTOR OF WATER RESOURCES MAY WAIVE ANY REGULATORY REQUIREMENT ADOPTED PURSUANT TO TITLE 45 WITH RESPECT TO A SITE OR PORTION OF A SITE AS PART OF A MITIGATION ORDER ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO SECTION 49-286 FOR THAT SITE OR PORTION OF A SITE IF THE REGULATORY REQUIREMENT CONFLICTS WITH THE IMPLEMENTATION OF THE ORDERED MITIGATION ACTIVITIES, PROVIDED THAT THE WAIVER DOES NOT RESULT IN ADVERSE IMPACTS TO OTHER LAND AND WATER USERS. NO WAIVER MAY BE GRANTED UNDER THIS SUBSECTION IF IT IS PROHIBITED BY FEDERAL LAW OR IF THE WAIVER WOULD JEOPARDIZE THE CONTINUED DELEGATION TO THE STATE OF AUTHORITY TO IMPLEMENT A FEDERAL ENVIRONMENTAL PROGRAM.

Sec. 20. Purpose

Pursuant to section 41-2955, subsection E, Arizona Revised Statutes, the purpose of the mining advisory council is to review mining policy in this state and provide assistance to state agencies regarding rules affecting mining in this state.

APPROVED BY THE GOVERNOR MAY 11, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 2010.